IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

WP(C).No. 7109 of 2007(U)

OS.237/2003 of PRINCIPAL SUB COURT,KOLLAM
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PETITIONER:

LAILA RAJU, AGED 42 YEARS,
WIFE OF RAJU ZACHARIA, RESIDING AT CR LARS,
NEAR PATTATHILKAVU, VADAKKEVILA VILLAGE,
KOLLAM TALUK, KOLLAM.

BY ADV. SRI.JOHNSON GOMEZ

RESPONDENTS:

FATHIMA JOHN, AGED 35,
WIFE OF JOHN GOMEZ, RESIDING AT DIVYA HOUSE,
PALACE ROAD, KOLLAM WEST VILLAGE, KOLLAM TALUK,
KOLLAM DISTRICT.

BY ADV. SRI.R.S.KALKURA
SRI.HARISH GOPINATH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: A TRUE COPY OF THE PLAINT FILED BY THE RESPONDENT BEFORE THE PRINCIPAL SUB COURT KOLLAM.

EXT.P2: A TRUE COPY OF THE WRITTEN STATEMENT DATED 24.07.2003 BEFORE THE PRINCIPAL SUB COURT, KOLLAM IN O.S.237/03.

EXT.P3: A TRUE COPY OF THE CHIEF AFFIDAVIT DATED 03.02.2007 FILED BY THE RESPONDENT BEFORE THE PRINCIPAL SUB COURT, KOLLAM IN O.S. 237/2003.

EXT.P4: A TRUE COPY OF THE CHIEF AFFIDAVIT DATED 17.02.2007 SWORN BY THE PETITIONER'S HUSBAND BEFORE PRINCIPAL SUB COURT, KOLLAM IN O.S. NO. 237/2003.

EXT.P5: A TRUE PHOTOCOPY OF THE CHEQUE NO. 149509 DATED 02.06.2003 FOR AN AMOUNT OF RS.2,75,000/- DRAWN ON CATHOLIC SYRIAN BANK LTD. KILIKOLLOOR, KOLLAM.

EXT.P6: A TRUE COPY OF IA. NO. 678 OF 2007 IN O.S. 237 OF 2003 BEFORE THE PRINCIPAL SUB COURT, KOLLAM DT. 19.02.2007.

EXT.P7: A TRUE COPY OF I.A. NO. 679 OF 2007 IN O.S.NO. 237 OF 2003 BEFORE THE PRINCIPAL SUB COURT, KOLLAM DT. 19.02.2007.

EXT.P8: A TRUE COPY OF THE ORDER DATED 19.02.2007 IA. NO. 678 OF 2007 IN O.S. 237 OF 2003 BEFORE THE PRINCIPAL SUB COURT, KOLLAM.

EXT.P9: A TRUE COPY OF THE ORDER DATED 19.02.2007 IA. NO. 679 OF 2007 IN OS. NO. 237 OF 2003 BEFORE THE PRINCIPAL SUB COURT, KOLLAM.

/True Copy/

P.A to Judge.

M.N. KRISHNAN , J

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W.P.(C) NO. 7109 OF 2007

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Dated this the 16th day of August, 2007.

JUDGMENT

This writ petition is filed seeking to set aside Exts.P8 and P9 orders passed by the Subordinate Judge, Kollam in O.S. No. 237/2003. Ext.P8 was passed on a petition wherein a prayer was made to refer the documents to the FSL to find out the age, the hand writing, signature etc. The court dismissed the same. I.A. No. 679/2007 was filed for further evidence and cross examination. It was also dismissed. The learned counsel for the writ petitioner submits that the orders of the court below suffers a very serious infirmity which requires interference at the hands of this Court. I had gone through the plaint, written statement and other documents produced before this Court. On a perusal, the case of the plaintiff in the suit is to the effect that the defendant has issued a post dated cheque for a sum of Rs.2,75,000/- drawn on the Catholic Bank. Since the amounts has not been paid, the claim is filed for the realisation of the amount. The defendant in the written statement had denied the execution of any cheque that "the defendant never assured the plaintiff that there is sufficient amount in her account to honour the cheque since the

defendant never issued any cheque or other instruments to the plaintiff". There is no case that blank cheque with signature was given and it has been utilised by the plaintiff and a case has been initiated and further there is no case that the writing on the body of the cheque is not written by the defendant. So the attempted case at this stage is one of the material alteration under Section 87 of the Negotiable Instruments Act which itself renders an instrument void. When there is a specific pleading in the plaint regarding the issuance of cheque and when there is a blanket denial of the execution of the cheque and absolutely no averment regarding the admission of the signature in the cheque or of the writing and the plea of material alteration which has to be raised has not been raised it is too difficult to accept the case at the stage of evidence. The denial of execution of cheque and admission of signature in the cheque with the addition that the body is not written by the defendant are two extreme situation and one has to be very precise and cogent in such pleadings. The learned counsel for the writ petitioner brought my attention to paragraph 4 of the petition filed by him wherein, according to him, the plaintiff has admitted in evidence that the defendant had written the cheque and had affixed her signature and also refers to the name, date etc. The

learned counsel for the other side had taken me through the chief affidavit filed by the plaintiff in the case. What the plaintiff has admitted in the chief examination is only regarding the execution of the cheque and not anything else. The plaintiff has not referred to each and every ingredient that was found in the cheque because she was not expected at that time to state anything for the reason that the defendant's contention was that of a blanket denial. So the averment in support of the application to send the document for F.S.L. is not true in the light of what is seen from the chief affidavit of the plaintiff. The party cannot be permitted to go on changing and he must stick to the pleadings and the court is also only expected to permit the parties to adduce evidence in support of the pleadings and not anything extraneous to that. These are well settled propositions of law. The learned counsel for the writ petitioner had placed before me the decision of this Court reported in **Bindu v. Sreekantan Nair** (2007(1) KLT 525). This Court has held that admission of signature is not equivalent with admission of execution. There cannot be any quarrel about that proposition of law. There is no case for the defendant in the pleadings that she had affixed her signature to that cheque. Her case is that of total denial of the execution of the cheque. One can

understand that if there was a pleading in the case to the effect that the signature in the cheque is of hers and the body of the cheque is not written in her hand writing then one has to necessarily appreciate that contention. Now, after the evidence of the plaintiff is over the defendant does not choose to come to box but permit the husband to speak on her behalf and the contention raised at that stage cannot be substituted as a pleading and therefore the court below was perfectly in its order when it declined to entertain both the applications. I reiterate that the evidence in the case must be with respect to the pleadings of the parties and the issue that arises for consideration from that and not to the extraneous things which is developed at a subsequent stage. Therefore, the writ petition lacks merits and it is dismissed.

M.N. KRISHNAN, JUDGE.

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